

Unfair dismissal – Day One Frights

The Government should keep but reduce ‘qualifying periods’ for unfair dismissal protection

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Nye Cominetti

The Government’s Employment Rights Bill is important and welcome ...

The Government’s [Employment Rights Bill](#) (ERB) is nearing the end of its parliamentary journey. It’s a sprawling, [300-page](#) piece of legislation containing a lot of measures (27 by [one count](#)), covering big areas like collective bargaining in social care, union law, rights for shift workers, and sick pay, as well as some narrower changes like the allocation of tips.

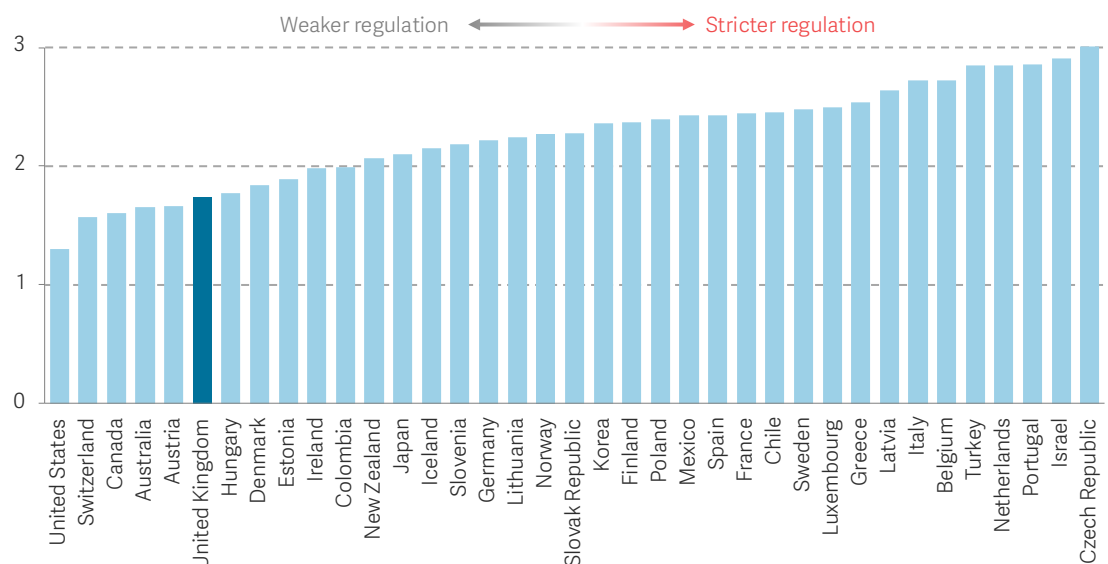
One aim of the Bill is to reduce job-related insecurity. For many (generally low-paid) British workers, insecurity is too high, and it’s been a long time since policy makers tried to do anything about this. For example, there are [1.2 million](#) workers on zero-hours contracts, and there is currently nothing in UK law to stop employers cancelling those workers’ shifts without notice. When this happens it creates hassle and [anxiety](#), and leads to unpredictable pay and income. The Bill will make employers compensate workers when their shifts are cancelled without proper notice and will give workers a right to a contract with guaranteed hours.

Of course, reducing workers’ insecurity is a good thing to do, but there are trade-offs. To take an extreme example, we could end job-related insecurity entirely by banning employers from making dismissals or from making any changes to shift patterns. This would definitely make workers feel more secure, and there might be other benefits too: employers might invest more in training their current staff. But there would also be problems. Employers would be nervous about hiring new workers or offering shifts, and this would make life harder for job seekers, and could harm the economy if it slowed the movement of workers to jobs where they can be most productive. So, the question is how to get the balance right.

The UK’s employment law starts from a fairly extreme position compared to other rich countries. We do little to protect workers financially when they can’t work ([unemployment benefits](#) and [sick pay](#) are low), and there are few constraints on employers when it comes to making dismissals (there are only [five](#) OECD countries where it is easier to fire someone) or using flexible forms of work. OECD’s scores for the overall strength of employment law relating to dismissing workers is shown in Figure 1. We are also less good at [enforcing](#) our

labour market laws; last week saw another round of [naming and shaming](#) of employers failing to pay the minimum wage, but more impactful would be [higher fines](#). This low-protection/low-regulation starting position means the reforms in the ERB will mainly make the UK less of an international outlier, rather than moving us to the other end of the scale.

Figure 1 **The UK currently imposes few restrictions on employers making dismissals**
OECD's index of strictness of employment law relating to dismissing individual workers on a regular contract: OECD countries, 2019



Notes: Components of this indicator include procedural requirements when making dismissals (including whether an employer needs to notify third parties), notice and severance pay, the regulatory framework for unfair dismissals (which includes how 'unfair' is defined) and how unfair dismissal regulation is enforced (which includes potential penalties for employers, or whether workers have the right to be reinstated).

Source: OECD, Employment Protection Indicators.

... but it should change tack on unfair dismissal

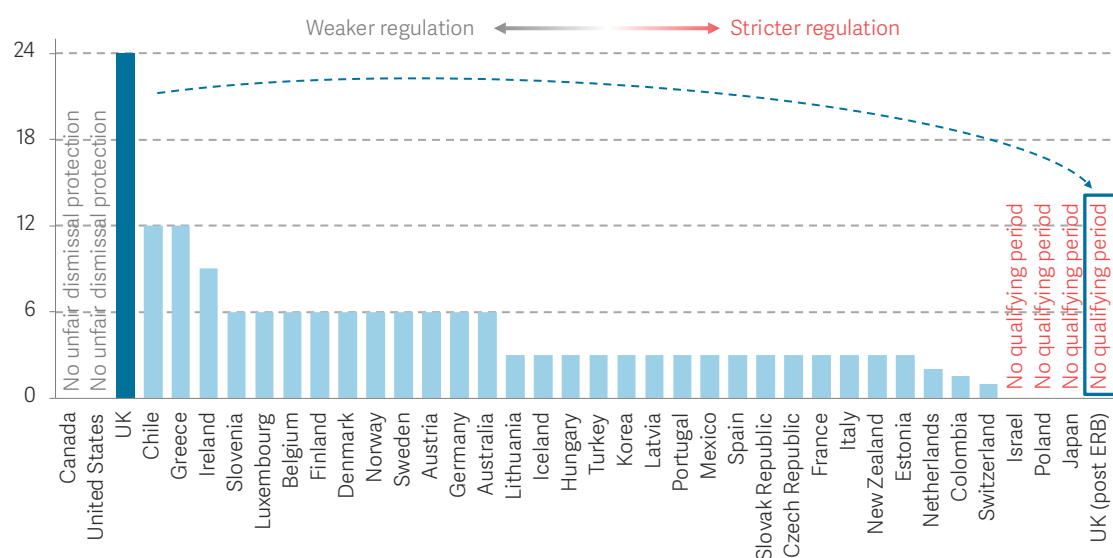
One exception to this picture of the ERB as bringing the UK more into line with other countries is the plan to make protection from unfair dismissal a 'day one' right. That will take the UK from one end of the international scale to the other – see Figure 2 below.

Reform here is definitely needed. Currently, protection from unfair dismissal kicks in only when someone has been in the job for two years. That [doesn't mean](#) employers can do what they like within those two years: if they make a dismissal which is discriminatory, or dismiss someone because they're a whistleblower, for example, then they could be taken to an employment tribunal. But in general, in the first two years, employers don't need to demonstrate that dismissals are 'fair' (which would require that they are happening for a fair [reason](#) (including redundancy and performance) and happening through a fair [process](#)). As it stands, the law places no fairness constraint on dismissing workers who may be well-established in their jobs, albeit for less than two years.

Figure 2

Making unfair dismissal a ‘day one’ right would be a big change from the UK’s current two-year qualifying period

Length of ‘qualifying period’ (months) before unfair dismissal protection applies: OECD countries, 2019



One rationale for having a ‘qualifying period’ is that employers need to have a chance to test whether a new hire is a good match. But this doesn’t take two years. In a survey last year, among employers who use probation periods, only [3 per cent](#) said they used probation periods greater than six months, and almost two thirds (64 per cent) used a period of three months or less. That’s why most countries tend to have qualifying periods which are about this long: out of 38 OECD countries, the median length for the qualifying periods for unfair dismissal protection is [three months](#), and only four have qualifying periods for unfair dismissal protection which are more than six months long.

Our [view](#) is that the Government should follow those countries’ lead. It should retain a qualifying period, but reduce it from the current two years to either three months (bringing the UK into line with countries such as Denmark, Germany, Norway, and Sweden) or six months (bringing us into line with countries such as New Zealand and Korea). This strikes the right balance in the protection-flexibility trade-off. It conforms both with international norms and with how employers themselves operate.

The Government’s plan, on other hand – of getting rid of qualifying periods entirely by making this a ‘day one’ right – has the potential to inhibit hiring, potentially getting the protection-flexibility balance wrong. And this concern is heightened in the current labour market context of falling jobs (the number of payrolled employee jobs has fallen by [127,000](#) over the

past year) and slowing hiring (the number of vacancies employers are posting has been [falling](#) for two years, and is now below pre-pandemic levels).

One group of particular concern at the moment are younger adults. The number of young people (aged 16 to 24) not working or studying has risen post-pandemic, and is at its [highest level in a decade](#). And young people's employment prospects are more sensitive to hiring conditions than older workers because they are more likely to be looking for work (either their first job, or a step up the job ladder). [10 per cent](#) of 16-to-24-year-olds in work are new starters (in the job for three months or less) compared to 3 per cent of older workers. That's why policy makers often seek to try to shift things in their favour – the UK got rid of payroll taxes for under 21s [back in 2015](#), for example.

Making dismissals as hard as in the ERB might also be for little obvious gain to workers. Workers today are about [half as likely](#) to lose their job as they were 30 years ago, and, unsurprisingly, workers are [less worried](#) about losing their jobs (it helps that unemployment remains low by historical standards – meaning that people who do lose their job are likely to spend less time unemployed than previously). The Government should 'spend' the costs and risks that come with employment reform where the potential benefits to workers' wellbeing are set to be greatest – such as with reforms to shift work – and not where the potential benefits are smaller.

There is also a practical argument against 'day one' unfair dismissal protection: the employment tribunal system isn't in a fit state to deal with more claims. The claims backlog has been [growing](#), and some claims are taking as long as [two years](#) to be resolved, long enough that some companies [go out of business](#) before workers receive awards. The Government has [apparently](#) considered re-introducing tribunal fees to bring a claim, but this would be unfair on those low-paid workers most likely to need to bring a claim.

The Government is aware of the risks associated with scrapping qualifying periods for unfair dismissal protection – they have proposed new nine-month legal 'probation' periods where dismissals have to be 'fair', but where the bar that employers have to clear to demonstrate they have acted fairly is set lower. This is a messy compromise, and there is a risk that it is likely to be poorly understood by many employers, meaning that it may not fully mitigate any adverse effects on employers' willingness to hire.

Instead, the Government should change tack, and opt for the much more straightforward approach of keeping qualifying periods, but massively reducing them. This needs to happen now. Even though the Government has pencilled this change in for [implementation in 2027](#), the Bill itself could be back in the Commons in the next few weeks. And, although many of the ERB's reforms won't effectively be finalized until secondary legislation is passed, scrapping qualifying periods is happening in the primary legislation itself. Reducing rather than scrapping qualifying periods would still respect the spirit of the Government's manifesto, and it would deliver a security upgrade to millions of workers (reducing the qualifying period to six months would give protection from unfair dismissal to an additional 6

million employees),¹ but it would do so in a way that doesn't needlessly put employers off hiring.

¹ This is the number of employees in their job more than six months but less than two years. From analysis of ONS, Labour Force Survey, Q1 2025.